

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 07-0350P**  
**Withholding Tax**  
**For Periods January 2007-February 2007**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration- Ten Percent Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

The taxpayer was assessed a ten percent negligence penalty for the late payment of withholding taxes for the periods ending 1/31/2007 through 2/28/2007. Taxpayer protested the penalty assessment.

The Department sent a letter to the taxpayer stating that the taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. The taxpayer did not reply to the Department's letter. Due to the taxpayer's failure to reply, this Letter of Findings is written based on the information in the taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration- Ten Percent Negligence Penalty.**

**DISCUSSION**

The taxpayer protests the imposition of the ten percent negligence penalty imposed for the late filing of its withholding tax returns pursuant to IC 6-8.1-10-2.1.

The taxpayer utilizes an outside tax service which is responsible for the filing and payment of the Indiana withholding taxes. The service provider is acting in an agency capacity for the taxpayer with full authority to do so concerning the filing and payment of these taxes. The actions of the agent acting on behalf of the taxpayer are viewed the same as if they were the actions of the taxpayer itself.

IC § 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Though the taxpayer has had a good history of compliance, the outside tax service's error and the standard of care of the outside tax service is imputed to and binding upon the taxpayer. The taxpayer has not set forth a basis whereby the Department could conclude it exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, reasonable cause has not been demonstrated as required to permit waiver of the penalty.

### **FINDING**

The taxpayer's protest is denied.

JR/BK/DK September 7, 2007